

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE JOHNSON & JOHNSON TALCUM
POWDER PRODUCTS, MARKETING, 16-MD-2738-MAS-RLS
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION STATUS CONFERENCE

CLARKSON S. FISHER BUILDING & U.S. COURTHOUSE
402 East State Street, Trenton, New Jersey 08608
September 6, 2023
Commencing at 9:59 a.m.

B E F O R E: THE HONORABLE MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

THE HONORABLE RUKHSANAH L. SINGH
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

FOR PLAINTIFFS:

ASHCRAFT & GERAL
BY: MICHELLE A. PARFITT, ESQUIRE
BY: JAMES GREEN, ESQUIRE

BEASLEY ALLEN
BY: P. LEIGH O'DELL, ESQUIRE

COHEN PLACITELLA & ROTH
BY: CHRISTOPHER PLACITELLA, ESQUIRE
BY: JUSTIN PLACITELLA, ESQUIRE

Proceedings recorded by mechanical stenography
Transcript produced by computer-aided transcription

Shannan Gagliardi, Official Court Reporter
shannan_gagliardi@njd.uscourts.gov
(609) 851-2750

1 GOLOMB SPIRT & GRUNFELD
2 BY: RICHARD GOLOMB, ESQUIRE

3 MOTLEY RICE
4 BY: DANIEL LAPINSKI, ESQUIRE

5 GRANT & EISENHOFER
6 BY: SINDHU DANIEL, ESQUIRE

7 MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN
8 BY: VICKI MANIATIS, ESQUIRE

9 NAPOLI SHKOLNIK
10 BY: CHRIS LoPALO, ESQUIRE

11 FOR DEFENDANT JOHNSON & JOHNSON:

12 FAEGRE DRINKER BIDDLE & REATH
13 BY: SUSAN M. SHARKO, ESQUIRE
14 BY: ERIC FRIEDMAN, ESQUIRE

15 SHOOK HARDY & BACON
16 BY: KATHLEEN FRAZIER, ESQUIRE

17 SKADDEN ARPS
18 BY: ALLISON BROWN, ESQUIRE

19 KING & SPALDING
20 BY: KRISTEN FOURNIER, ESQUIRE

21 JOHNSON & JOHNSON
22 BY: ANDREW C. WHITE, ESQUIRE

23 FOR DEFENDANT PCPC:

24 SEYFARTH SHAW
25 BY: DAVID KATZENSTEIN, ESQUIRE
BY: RENÉE APPEL, ESQUIRE

FOR DEFENDANT PTI:

HARDIN KUNDLA McKEON & POLETT
BY: JANET POLETT, ESQUIRE

1 And then third, a list of dispositive motions that
2 are pending.

3 If there are any discrepancies, when the Court
4 reviews the joint submission, we'll follow up with counsel.
5 But I'd like for you folks to meet-and-confer and e-file a
6 joint submission by next week, a week from today, which would
7 be about September -- I have to look at my calendar here,
8 September 12. Let's have them on September 12.

9 The next item I have is a scheduling order. Counsel
10 submitted proposed forms of scheduling orders. The proposed
11 scheduling orders are identical with the exception of
12 paragraph 8, which addresses dispositive and Daubert motions.

13 Plaintiffs' version of paragraph 8 reads as follows:
14 Quote, dispositive motions, including any Daubert motions
15 relating to case-specific and general expert opinions not
16 previously addressed by the Court's April 27, 2020 Daubert
17 opinion, shall be filed by May 6, 2024.

18 Defendant's version of that same paragraph 8 reads as
19 follows: Quote, dispositive motions, including Daubert
20 motions, shall be filed by May 6, 2024, closed quote.

21 I've reviewed your written submissions regarding
22 this. Is there anything else you need to briefly add for the
23 record? And, again, you folks have done a really comprehensive
24 job setting forth your respective positions, but I do want to
25 afford you an opportunity in case there's something additional

1 that you want to put on the record.

2 So let me hear from plaintiffs' counsel.

3 MS. PARFITT: Thank you, Your Honor.

4 Yes. What I wanted to emphasize for the Court is the
5 fact that Judge Wolfson, eloquently, during the course of her
6 Daubert order and certainly the period leading up to the actual
7 Daubert order, the Daubert proceeding, we had eight days of
8 hearing, as you're well aware. And each one of the five
9 representative experts that were examined had an opportunity
10 not only to be cross-examined by defendants, but, frankly,
11 Judge Wolfson.

12 And in going back, and I think we all take a trip
13 down memory lane as we come into the court today, what I found
14 most interesting is I think Judge Wolfson was very prescient
15 with regard to her understanding of what it was that each one
16 of those experts would need to do. And she emphasized the
17 methodology. She emphasized the fact that she understood that
18 there would be ongoing science. Science doesn't stop; it is
19 dynamic. And today, there could be something written about
20 talc.

21 But what she was very careful to say and to examine
22 the experts on was the methodology and reliability of their
23 opinions and the validity of their opinions. And more
24 importantly, in light of new rule coming up December 1, Federal
25 Rule 702, it's interesting because the addition for the new

1 rules seem to suggest applying those methodologies and those
2 principles to the facts of the case.

3 And Judge Wolfson, on page 119 of her order, was very
4 specific with regard to how, in fact, our experts had indeed
5 complied with that particular provision, that they not only
6 used reliable scientific and admissible methodology, but they
7 applied it to the specific facts of this case.

8 So I think that was something that would be very
9 important. She was very clear that there was not -- even with
10 new science, if opinions changed, that would be relevant. But
11 if we're just talking about new works that reaffirm, and indeed
12 in this particular case, any science since the time of the
13 briefing for the Daubert proceeding and post the issuing of the
14 Court's order, Health Canada, O'Brien, the O'Brien study, which
15 is really emphasized by the defendants that it is a new study.
16 That study was actually submitted to Judge Wolfson post-Daubert
17 hearing, pre-Daubert order.

18 Health Canada, which was really the most significant
19 systematic analysis, has been done by an agency that was very
20 much in accord with what the plaintiffs' experts had testified
21 to and submitted their reports on.

22 All that to say that it was very clear to the Court
23 that she had considered relevant science and also considered
24 the fact that there would be new science, but we weren't going
25 to come back and redo Daubert on those individuals where she

1 had done extensive, extensive analysis and reviewed not only
2 qualifications but, frankly, their methodology and process, her
3 arriving at their conclusions, which are very much, again, in
4 sync with, I think, what the new rules expect of the Court and
5 its gatekeeping role.

6 So that's the discrepancy, I believe, between the
7 parties, that we not go back and do that which we spent years
8 developing. If the experts had looked at a new article, I can
9 assure the Court in this particular case all new science, any
10 new science has only further affirmed and confirmed the
11 opinions of our experts on general causation, and there is
12 really nothing new.

13 What was new back in '20 was actually at least in the
14 hands of the judge, and anything that's come from that, even in
15 2021, have been studies -- one other study, the Smith-Bindman
16 and Woolen study, which looked at one issue that was hotly
17 debated, shall I say, during the course of the Daubert
18 proceedings. And that was, do you see increased risk with
19 increased duration, increased frequency. And indeed, that
20 study was then performed in 2021 by Woolen and Smith-Bindman,
21 and they concluded that with increased use and duration of the
22 product, there was an increased risk in developing ovarian
23 cancers.

24 So the only thing I would add to what's already been
25 put is that I believe the methodologies have been sharply and

1 astutely and critically examined by Judge Wolfson, and there
2 would be no need to go back and do a redo of those Daubert
3 proceedings. And I think that's what the counsel have a
4 dispute about.

5 We don't want to redo. We're moving forward.
6 There's nothing new that can't bear cross-examination. They
7 will have ample opportunity to examine our experts on any new
8 studies. They can ask whether or not that's changed opinion.
9 Again, I confirm to the Court that it has not. It's only
10 further strengthened their opinions. But they have an
11 opportunity. That's what cross-examination is about.

12 And if I can read to the Court, and I thought this
13 was just, again, a very important part. The judge, on page 119
14 of her order, said: The Court finds that the opinions of the
15 plaintiffs' general causation experts are admissible under
16 Daubert, subject to the limitations on certain testimony as set
17 forth above. The experts reliably applied each factor of the
18 Bradford Hill analysis.

19 And then she says: Where, as here -- and this goes
20 to the new rules. They go into effect on the first of
21 December. Where, as here, the causation experts' opinions are
22 based on facts, a reasonable investigation, including
23 documented findings, and traditional technical/mechanical
24 expertise, and the experts provide a reasonable link between
25 the information and procedures they use and the conclusions

1 reached, the Daubert requirements are met.

2 And she was, again, very clear to say that my rulings
3 as to the five experts apply to all those other experts that
4 were in those same disciplines, and we need not go back.

5 Certainly, an expert that has not gone forward with
6 the Daubert proceeding, the Court will have to address that.
7 But with regard to going back and redoing what we were doing
8 over the last seven years seems to be an unnecessary delay when
9 Judge Wolfson had done such a, I think, masterful job with
10 regard to that examination.

11 So with that, Your Honor, I'll sit down unless you
12 have any questions.

13 THE COURT: Before you sit, just one question.

14 MS. PARFITT: Of course.

15 THE COURT: Do you believe that this new contemplated
16 rule, or Evidence Rule 702, does it have any impact on Judge
17 Wolfson's opinion? Do you think it makes it vulnerable?

18 MS. PARFITT: I think she was there. As I said, I
19 think she was prescient with regard to that. Page 119 is
20 almost in sync, the new rules, and the only change is the
21 expert opinion reflects a reliable application of the principle
22 and methods to the facts of the case, exactly what she said
23 these experts did on page 119.

24 The old rule, still the existing rule for us, is the
25 expert has reliably applied the principles and methods to the

1 facts. In this case, our experts did just that. And she found
2 that the expert opinions reflect a reliable application of the
3 principles and methods, and they were examined on that.

4 So I think it's very much in sync. I don't know that
5 she made that distinction. Perhaps she was even more cautious,
6 cautious than many during -- back in 2020, not knowing what
7 was -- what the world would look like.

8 So I think that it's -- it certainly changes nothing
9 with regard to those experts. In fact, I think they are in
10 lockstep with any new rules that would be contemplating of an
11 expert.

12 THE COURT: Do you also think that Judge Wolfson kept
13 open the door -- let me see if I have the exact language. I
14 know she referred to it. She says in that same opinion that if
15 the supplemental reports impact my Daubert decisions made in
16 this opinion, I may amend my rulings at a later time.

17 MS. PARFITT: If I can respond, any amendment to the
18 expert reports of those individual experts that have already
19 undergone a Daubert process, extensive Daubert process and
20 briefing, what we will be doing is simply supplementing any
21 additional literature that they may have read, which one would
22 expect.

23 Let's say we have a trial a year from now. Your
24 Honor would expect those experts to continue to keep in
25 lockstep with any new science, good or bad. In this particular

1 case, that's exactly what these experts have done, continued to
2 monitor the literature and make sure they keep pace and they
3 understand literature on both sides of the fence.

4 And in this case, she anticipated that, but I think
5 her written statement is if it changes, if their methodologies
6 would change. Their methodologies have not changed. The
7 methodologies that they employed from looking at all the
8 science four years ago is precisely the same methodology that
9 they're employing when they review any new science.

10 That is to say she examined that methodology in these
11 processes, and that's what was critical for her. Whether or
12 not they come up with different conclusions, that's not --
13 that's not the relevant inquiry. The relevant inquiry is
14 whether or not they employed reliable and valid scientific
15 methodology, and she found that they passed that.

16 And so, therefore, we would share with the Court that
17 that's what they will continue to do. So if they look at
18 another article, they're employing the same methodologies that
19 she approved and the same methodologies that she found
20 admissible. They would just review articles and they would
21 just add that to their arsenal, so to speak, of articles and
22 would report on it. But it has not changed opinions, and
23 certainly new articles coming up would not change their
24 methodologies, again, which were exhaustively examined by her.

25 I know you weren't there, Judge, but it was really

1 interesting, you know, having sat through a lot of Daubert --
2 participated in a lot of Daubert proceedings. Sometimes the
3 judge is very active and sometimes they're not. In this case,
4 I would think she was very active. She had read everything,
5 had a lot of questions. She was inquisitive, asked good
6 questions of both sides. Some that were difficult to answer,
7 some that were much easier to answer.

8 But I would assume by the fact that the methodologies
9 employed, that has not changed. There's no reason to go have a
10 new Daubert proceeding. If you want to inquire about a new
11 study, what they have to say about it, that's fair. But to
12 have another Daubert proceeding to determine whether or not
13 they're applying appropriate methodologies, that's not changed.
14 It's stagnant.

15 But they did it the right way in the beginning, and
16 that was key to the judge. Were they applying proper
17 methodology? Should they be permitted to walk into this
18 courtroom and share with the judge and jury their opinions? Do
19 they have that right? And she acted as the gatekeeper, and I
20 think she took her responsibilities very seriously and wise.

21 THE COURT: Okay.

22 MS. PARFITT: Any other questions?

23 THE COURT: No. I think we're good. Let me hear
24 from defense counsel.

25 Wait, is there something else?

1 MS. PARFITT: Yeah. And counsel reminds me that,
2 certainly, if they change their mind and said, oh, I was wrong,
3 there is no causation, certainly that would be permitted. I
4 assure the Court that's not happening. That's the Perry Mason
5 difference, right? That doesn't happen in our world.

6 Thank you. And I stand ready to answer any other
7 questions.

8 THE COURT: Thank you, Ms. Parfitt.

9 Ms. Sharko.

10 MS. SHARKO: So the problem with plaintiffs' proposed
11 language is that it would handcuff the Court and handcuff
12 counsel to a hearing that took place in 2019, to reports that
13 were written in 2019, to an opinion based on the law as it
14 existed in 2020, and to a different rule. And we think that
15 that's inappropriate.

16 A practical solution here is to adopt the defense
17 language, which has no reference to the Daubert opinion. And
18 then when we make our Rule 702 challenges on specific causation
19 and other issues, if the plaintiffs think that we are not
20 following what Chief Judge Wolfson would have done based on
21 2019 science and 2020 law, they can raise that in their
22 opposition, we can respond, and you will rule on that. But you
23 shouldn't foreclose any arguments on 702 that may have been
24 raised before.

25 Now, there have been new articles. We cited some of

1 them in our papers. The O'Brien paper was submitted to Chief
2 Judge Wolfson, but she specifically said I'm not going to
3 consider that, I haven't heard from the experts on that. So
4 she let people send in literature, but she didn't consider
5 that. And there were other -- there have been other
6 publications since 2019. I'm certain that there will continue
7 to be publications up until the next time we argue these issues
8 and maybe thereafter. So the science is moving.

9 And then as to the law, I disagree with Ms. Parfitt
10 there. When you look at the committee notes for the new rule
11 amendment, they say, quote, many courts have held that critical
12 questions of the sufficiency of an expert's basis and the
13 application of the expert's methodology are questions of weight
14 and not admissibility. These rulings are an incorrect
15 application of Rule 702 and 104(a).

16 And the advisory committee notes go on from there.

17 And that's one of the key issues here. When one
18 looks at Judge Wolfson's opinion, she uses the word "weight" 55
19 times. Now, am I going to reargue each of those 55 things? I
20 don't think so. But I'd like to have that opportunity
21 depending on the facts, depending on the circumstances,
22 depending on the expert's opinion.

23 So that's all we're asking, that we leave it open and
24 we deal with it when the moment arises.

25 THE COURT: Thank you. So at this point, I'm going

1 to reserve on this issue. I'm going to take a look at all of
2 this and I'll be making a decision on that. I have another
3 item that's relevant to this. I'm going to table it for a
4 little bit further in our discussion today, but we will keep
5 moving.

6 I want to next talk with you about the bellwether
7 trials. In both proposed scheduling orders, replies to
8 dispositive and Daubert motions are due on June 26, 2024. Now,
9 of course, the Court will need some time to decide the motions.
10 The proposed forms of scheduling order do not contain any
11 figure at paragraph 11, and at paragraph 12, the proposed forms
12 of scheduling orders provide that plaintiff shall serve the
13 final list of trial experts for the first bellwether trial 60
14 days prior to the date of the first trial.

15 So based on the dates that counsel jointly proposed,
16 it appears that the earliest the parties will be prepared to
17 proceed to a bellwether trial will be either late 2024 or early
18 2025; is that correct? Is that what you're anticipating?

19 MS. O'DELL: Your Honor, depending on the number of
20 motions that are filed -- Leigh O'Dell for the Plaintiffs'
21 Steering Committee for the record.

22 But depending on the number of motions filed,
23 depending on the Court's schedule, what we had hoped, from the
24 plaintiffs' perspective, is that the trial would occur in the
25 fall of next year, that we would not spill over into 2025.

1 kind of documents what we've talked about here today, but the
2 sooner you can respond with some of the outstanding items, the
3 sooner we can get going in terms of coming up with a more
4 comprehensive plan for moving forward.

5 It was a pleasure meeting all of you. Have a great
6 day.

7 THE DEPUTY CLERK: All rise.

8 (Proceedings adjourned at 11:00 a.m.)
9

10 CERTIFICATION
11

12 I certify that the foregoing is a correct
13 transcript from the record of proceedings in the above-entitled
14 matter.
15
16

17 /S/Shannan Gagliardi, RDR, CRR

9/6/2023

18 Court Reporter/Transcriber
19
20
21
22
23
24
25